IN THE

Supreme Court of the United States

October Term, 1976

Docket No. 76-504

NATHRA NADER and ALBERT C. SNYDER, JR.,
Appellants,

—v.—

GLORIA SCHAFFER, Secretary of the State of Connecticut; DEMOCRATIC PARTY OF THE STATE OF CONNECTICUT; and REPUBLICAN PARTY OF THE STATE OF CONNECTICUT,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MOTION OF APPELLEES DEMOCRATIC AND REPUBLICAN PARTIES OF THE STATE OF CONNECTICUT TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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INDEX

TABLE OF AUTHORITIES

Cases:

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MOTION OF APPELLEES DEMOCRATIC AND REPUBLICAN PARTIES OF THE STATE OF CONNECTICUT TO AFFIRM AND BRIEF IN SUPPORT THEREOF

Appellees, the Democratic Party of the State of Connecticut and the Republican Party of the State of Connecticut, move, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, that the judgment of the United States District Court for the District of Connecticut be affirmed on the ground that the questions presented on appeal are not so substantial as to warrant further argument.

Statement

This is a direct appeal from the judgment dated July 20, 1976, of the United States District Court for the District of Connecticut, sitting as a three-judge court, dismissing the Appellants' Complaint which sought to enjoin enforcement of Section 9-431.[1] of the Connecticut General Statutes (Revision of 1958).

Section 9-431 limits participation in the primaries of a given political party in the State of Connecticut to the enrolled members of that party. Appellants sought to enjoin the Secretary of the State of Connecticut [2] from enforcing § 9-431 because they claimed that it forces them, as unaffiliated voters,[3] to choose between what they claim

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[1] *Conn. Gen. Stats.* (Rev. 1958) § 9-431 provides in pertinent part as follows:

> *Eligibility to vote at primary*: No person shall be permitted to vote at a primary of a party unless he is on the last completed enrollment list of such party in the municipality or voting district, as the case may be. . . .

[2] The Secretary of the State of Connecticut has plenary supervisory authority over the conduct of elections and primaries in Connecticut. *Conn. Gen. Stats.* (Rev. 1958) §§ 3-77, 3-87, 9-3 and 9-4. However, the mechanics of carrying out the electoral process must be performed by the various town clerks, registrars, election moderators and town committees in each of the 169 towns of Connecticut. None of these election officials were made parties to this action. The significance of the absence of these officials in this action is discussed in connection with the political question doctrine. *Infra*, pp. 11 *et seq.*

[3] Throughout their Brief, the Appellants refer to themselves as "independents", a term which carries with it a connotation of independent political philosophy. It is actually a misnomer. Under Connecticut law, a citizen by registering to vote becomes an "elector". *Conn. Gen. Stats.* (Rev. 1958) § 9-12. He may then apply for enrollment on the list of the political party of his preference. *Conn. Gen. Stats.* (Rev. 1958) § 9-56. If he does not choose to affiliate with a political party he is recorded on the roll of his town of residency as an unaffiliated elector.

is their right to vote and to associate in support of particular candidates on the one hand and their right to be free of coerced affiliation and to maintain their privacy of association on the other. The judgment of the District Court denied the Appellants' Motion for Summary Judgment and granted the Motions to Dismiss filed by these Appellees and by the Appellee, Gloria Schaffer.

Summary of Argument

Political parties are voluntary associations and as such have the power to regulate the membership thereof. Adherence to the philosophy and principals of a given political party is an enforceable condition of membership therein. So long as a political party does not impose constitutionally impermissible criteria for membership, they may otherwise regulate their members. Section 9-431 protects that right of association.

The Appellants' claim that § 9-431 forces them to associate with a political party whose philosophy or principles is specious. They are not required to adopt the political beliefs of every other member of such party but merely to undergo what amounts to an administrative recording of party affiliation. This process is necessary for the orderly conduct of the nominating processes of the various political parties and to prevent indiscriminate or premeditated efforts to alter the outcome of a given party's primary. Freedom not to associate is not a logical corollary of freedom to associate.

Party affiliation in Connecticut does not result in the imposition of a set of beliefs or conditions of behavior upon an elector so as to coerce him into decisions or actions he might not otherwise make. Appellants have

offered no proof that party affiliation will in any way violate their claimed right of privacy.

Appellants herein are seeking a judicial solution to a political question. Because they have failed to structure a mechanism to govern the conduct of party primaries should Section 9-431 be declared invalid, they would thrust the Court into the role of establishing rules and monitoring such primaries.

Appellants have failed to allege and prove a true case or controversy. They can participate in the primary process by the simple ministerial act of affiliating with a political party. If they choose not to do so, the Connecticut law provides adequate alternative access to the ballot, a process which has been followed by significant numbers of persons.

ARGUMENT

The principal claim asserted by the Appellants is that Section 9-431 "forces them to choose between exercise of their fundamental rights to vote and to associate in support of particular candidates on the one hand, and exercise of their fundamental rights to be free of coerced affiliation and to maintain their privacy of association on the other."[4] Stated more concisely, the Appellants want to participate in the process by which a political party chooses not only its candidates for public office but possibly its party leadership as well but do not want to be identified with the party or submit to whatever rules, however limited, it might impose on its members.

[4] Jurisdictional Statement, pp. 16-17.

These Appellees, the Democratic and Republic Parties of the State of Connecticut, submit that they and their respective members have rights of their own to associate together to advance their respective political philosophies and that included among those rights is the selection of candidates and leaders who are derived from and espouse the philosophies of their members. Section 9-431 of the Connecticut General Statutes helps to do just that.

A. Political Parties Are Voluntary Associations with the Power to Regulate the Membership Thereof.

The Democratic and Republican Parties of the State of Connecticut are, respectively, voluntary associations, instituted for political purposes. *Alcorn ex rel Dawson* v. *Gleason*, 10 Conn. Supp. 205, 217 (Com. Pl. 1941); *Fields* v. *Osborne*, 60 Conn. 544, 547, 21 Atl. 1070 (1891). Any state political party is a creature of its own time in that it is an association of a group of people with similar political theories at a given time and subject to a given set of rules. *Fields* v. *Osborne*, *supra*; *Socialist Labor Party* v. *Rhodes*, 290 F. Supp. 983, 988 (S.D. Ohio E.D. 1968); *United States* v. *Shirey*, 168 F. Supp. 382, 385 (M.D. Pa. 1958). As a political entity each political party[5] is entitled to lay down minimum standards for membership in and participation in the affairs of the Party, so long as those standards do not violate constitu-

[5] It should be noted that the Connecticut General Statutes do not limit participation in the electoral process to the Republican and Democratic parties. Section 9-372 provides for "major" parties whose candidates receive at least 20% of the vote for Governor at the last general election or at least 10% of the votes cast for the office being contested and "minor parties" whose candidates received less than 20% or 10% respectively. The number of such major and minor parties is limited only by the ability of their candidates to obtain votes in a contested election.

tionally protected rights of the rank and file.[6] However, other party regulations, which might otherwise infringe on the rights held dear by many citizens of this country, have been specifically upheld.

Thus, in *Ray* v. *Blair*, 343 U.S. 214 (1952), this Court held that party discipline is a legitimate exercise of power by a political party, notwithstanding a state statute in conflict with such discipline. In *Blair*, a "loyalty oath" adopted by the State Democratic Executive Committee of Alabama was under attack. The oath required candidates in Alabama's primary for presidential electors to pledge to support the nominees of the National Convention of the Democratic Party for President and Vice President. Title 17 of the Code of Alabama provided for regular optional primary elections in that state on the first Tuesday of May of even years by any political party. Title 17 § 347 permitted the State Executive Committee of any party to determine the qualifications of electors and § 348 required a candidate for presidential election to file his declaration of candidacy with the Executive Committee in the form prescribed by the governing body of the party. In addition, § 350 read as follows:

> At the bottom of the ballot and after the name of the last candidate shall be printed the following viz: "By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election."

[6] For example, barring participation in party affairs on the basis of race is constitutionally impermissible. In a series of cases referred to as the "White Primary Cases" this Court held that efforts by the Democratic Party of the State of Texas to prohibit Blacks from participating in the primary process violated their Fourteenth and Fifteenth Amendment rights. *See Nixon* v. *Herndon*, 273 U.S. 536 (1927); *Nixon* v. *Condon*, 286 U.S. 73 (1932); *Grovey* v. *Townsend*, 295 U.S. 45 (1935), overruled in *Smith* v. *Allwright*, 321 U.S. 649 (1944); and *Terry* v. *Adams*, 345 U.S. 461 (1953).

The Alabama Democratic Executive Committee went one step further and added an additional provision that the elector had to agree to support the nominees of the National Convention of the Democratic Party for President and Vice President of the United States. It was this provision which was objected to by the plaintiff in *Blair*. He was supported by the Supreme Court of Alabama which held the oath in violation of the Twelfth Amendment[7] to the Constitution of the United States. 57 So. 2d 395. The United States Supreme Court reversed the Alabama Court saying in 343 U.S. at 225:

> Neither the language of Article II § 1 nor that of the Twelfth Amendment forbids a party to require from candidates in its primary a pledge of political conformity with the aims of the party. Unless such a requirement is implicit, certainly neither provision of the Constitution requires a state political party, affiliated with a national party through acceptance of the national call to send state delegates to the national convention, to accept persons as candidates who refuse to agree to abide by the party's requirement.

The Court goes on to analyze and reject the theory that the loyalty oath impinges on the elector's freedom to vote his conscience for President for which theory the plaintiff

[7] The Twelfth Amendment was adopted to eliminate the difficulties caused by Article II, Section 1 which permitted electors to vote for two persons for President and Vice President without designating which office he wanted each to fill. The result could wind up a tie and throw the election into the House of Representatives. This Amendment permitted electors to vote separately for presidential and vice presidential candidates.

relied on *United States* v. *Classic*, 313 U.S. 299 (1941) and *Smith* v. *Allwright*, 321 U.S. 649 (1944). Those cases dealt with power to punish for criminal conduct in a primary and an attempt to exclude from party participation on the basis of race. In upholding the validity of the loyalty oath,[8] the Court said in 343 U.S. at 227:

> The issue here, however, is quite different from the power of Congress to punish criminal conduct in a primary or to allow charges for wrongs to rights secured by the Constitution. A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominee is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party.

The analogy between *Ray* v. *Blair* and the present case is clear. In *Blair* the Court held that participation in a primary could legitimately be limited to candidates who pledged themselves to the "philosophy and leadership of that party". If limiting the free exercise of choice, thought, and speech by a candidate is a legitimate exercise of power by a state or political party why is it also not legitimate to limit participation in the primary that chooses that party's candidates to persons who, by enrolling in that party, espouse its philosophy and leadership as well?

The point of the foregoing discussion relating to party discipline is that the Courts have recognized room for legitimate and reasonable political rules within the statu-

[8] *See also Dickson* v. *Taylor*, 105 F. Supp. 251 (W.D. Tex. 1952) and *Seay* v. *Latham*, 143 Tex. 1, 182 S.W.2d 251 (1944) in which loyalty oaths were upheld as legitimate exercises of party discipline.

tory and constitutional framework which preserve the identity of the political party. While it might be argued that a loyalty oath impinges upon one's freedom of thought and speech, such an oath has been held to be a legitimate exercise of party discipline. Since a political party has the power to impose this type of sanction on its candidates, then surely it must have the power to exclude from participation in its processes to choose candidates those persons who neither embrace nor follow the philosophy and leadership of that party. While the Democratic and Republican Parties of Connecticut do not gainsay the right of the plaintiffs to remain unaffiliated, they do assert their own respective rights to establish reasonable constitutional criteria for membership in and participation in party affairs. Since the nominating process is an integral part of each party's method of choosing candidates, exclusion of those persons who do not espouse the party's philosophy and leadership is not impermissible.

B. Freedom Not to Associate is Not A Logical Corollary of Freedom To Associate.

This Court has repeatedly held that freedom of association is protected by the First Amendment to the United States Constitution. *Williams* v. *Rhodes*, 393 U.S. 23, 31 (1968); *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217 (1967); *NAACP* v. *Button*, 371 U.S. 415 (1963); *NAACP* v. *Alabama*, 357 U.S. 449 (1958). Included among the freedoms protected is the right to "associate with others for the common advancement of political beliefs and ideas", a freedom that encompasses "the right to associate with the political party of one's choice." *Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975); *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973). That right of association is a meaningless one if the party's candidates for public office and its own leadership are to be chosen

by non-party members; *i.e.*, unaffiliated electors who not only might not espouse the party's political beliefs and ideas but indeed might find them inimical to their own.

The Appellants claim that Section 9-431 leaves them with the awful choice of not voting in a party's primary or giving up their "right not to associate". But where does an alleged right not to associate come from? *Elrod* v. *Burns*, — U.S. —, 44 U.S.L.W. 5091 (June 28, 1976), relied on so heavily by Appellants, is not controlling. In *Elrod*, this Court held that patronage dismissals of non-civil service employees of the Cook County, Illinois Sheriff's Office violated First and Fourteenth Amendment rights by forcing employees to join a political party they might otherwise disavow in order to keep their jobs. At stake was public employment which was being controlled by partisan considerations.

That is not the case here. All Section 9-431 does is limit participation in a partisan event, *i.e.*, the primary nominating process, to members of that partisan group.[9] There is no impact on one's livelihood, one's freedom of speech or one's political beliefs. The statute simply insures that the selection of a party's candidate in a state election [10] will be selected by members of that party. In

[9] The Appellants herein make no claim that the prohibition against crossover voting in Connecticut's primaries fails to meet constitutional standards. By seeking to vote in the primary of their choosing simply because they are unaffiliated, the Appellants seek a greater right than that afforded members of the major parties.

[10] In the recent Presidential election, the Democratic Party for the State of Connecticut conducted its own Presidential primary which was run and financed entirely by the Democratic Party outside the State's election laws. Neither Republicans, unaffiliated electors or minor party members were able to participate in this primary. It was an internal election conducted solely by a voluntary association in accordance with its own rules.

effect, the Appellants are being told that if you want to participate in the nominating game you must play the game according to the rules of the party whose candidates you are nominating. No one is barred from participating because he belongs to a constitutionally protected class of citizens. There is no coerced association in the constitutional sense.

Appellants further allege that if they "did succumb to the statute and swear an allegiance, they did not feel, there can be little doubt that publication of a list identifying them with a particular party would invade their privacy." [11] They did not choose to offer any evidence in support of this claim. The District Court quite properly disposed of this issue by noting that it is insufficient "merely to raise the spectre of harassment; instead, they must make a detailed factual showing of actual threats or incidents of harassment." [12]

C. Appellants Seek A Judicial Solution To A Political Question.

On the face of the Appellants' Complaint they seek simply to have Section 9-431 of the Connecticut General Statutes declared unconstitutional insofar as it prohibits unaffiliated voters from voting in a party's primary and to enjoin the Secretary of State from enforcing the same. This deceptively simple prayer for relief ignores the mechanics of running a primary election wherein, suddenly, a whole new class of voters are eligible to cast ballots without any method of insuring a fair election. Apparently the Appellants sought to remedy that problem by asking the Court to require the Secretary of State to

[11] Jurisdictional Statement, p. 21.

[12] Memorandum of Decision, Appellants' App. p. A-9.

"send to the clerks of each municipality in the State instructions for the use of the moderators in each voting district in the State, which instruction shall require each moderator to ensure that each plaintiff and each member of the plaintiff class is permitted to vote in a primary election of his or her choice."

Under Connecticut law, election laws are peculiarly the province of the General Assembly. *Lacava* v. *Carfi*, 140 Conn. 517, 519, 101 A.2d 795 (1953). The exercise of suffrage is not a natural but a political right, and the legislatures of the states acting within the powers conferred by their constitutions may prescribe the manner in which elections shall be conducted and the right of suffrage exercised. *Mills* v. *Gaynor*, 136 Conn. 632, 636, 73 A.2d 823 (1950); *Talcott* v. *Philbrick*, 59 Conn. 472, 478, 20 Atl. 436 (1890). Accord, *Scully* v. *Town of Westport*, 20 Conn. Supp. 399, 401, 137 A.2d 352 (1957). "The administration of the electoral process is a matter that the Constitution largely entrusts to the states." *Kusper* v. *Pontikes*, *supra*, 414 U.S. at 57.

It is well established that the federal courts will not adjudicate political questions. *Powell* v. *McCormack*, 395 U.S. 486 (1969); *Coleman* v. *Miller*, 307 U.S. 433 (1939); *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918). In *Baker* v. *Carr*, 369 U.S. 186, 217 (1962), this Court listed six categories of cases which historically involve questions deemed political and therefore non-judiciable:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of

> a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for an unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

These Appellees contend that this case presents exactly the type of issue that this Court said should be decided politically rather than judicially. In adopting the election laws of the State of Connecticut the General Assembly has established a policy which promotes the two party system instead of permitting the proliferation of political parties in evidence in a number of countries. Any attack on that policy should not be taken lightly.

Underpinning the election process in Connecticut is an elaborate system which is calculated to eliminate unlawful conduct and to insure that each elector's vote will be counted, but only once. By merely attacking the constitutionality of § 9-431 without spelling out the method of effecting a new system, the Appellants present to this Court classic political questions.

Should crossover of party lines be allowed? How does one insure that an unaffiliated elector votes in only one primary? At what primary stage should unaffiliated voters be allowed to participate?[13] If the unaffiliated

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[13] In Connecticut, the town committee of a major party constitutes the executive leadership of that party in a given town. Town committee members of a party can be selected by primary vote. (*Conn. Gen. Stats.* § 9-390). Similarly, delegates to the state convention of a major party who select the members of a party's state central committee may be chosen in a primary. Are the unaffiliated voters to be permitted to vote in primaries to select the party leadership they expressly disavow by refusing to affiliate?

elector can vote in primaries at every stage of the process, what happens to the accountability of the persons so elected?

These questions suggest that the problems raised by the Appellants in this action are more susceptible to solution, if indeed they are to be solved at all, legislatively rather than judicially. Since the electoral process is fundamentally a legislative one, this Court should not attempt to venture into an area that requires the ongoing oversight of the Secretary of State's Office. It is conceivable that this Court could become the enforcement agency of any order it might issue relating to primaries to be conducted in all 169 towns in both political parties. If ever a subject called for judicial restraint, this is it.

D. Appellants Have Failed To Allege a True Case Or Controversy.

In establishing the judicial branch of government, the United States Constitution limits the judicial power only to "cases" or "controversies".[14] The cases or controversies concept has been construed to embrace matters which are appropriate for judicial determination. *Osborn* v. *United States Bank*, 9 Wheat. 738, 819 (1824). Thus the controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U.S. 300, 301 (1892); *Fairchild* v. *Hughes*, 258 U.S. 126, 129 (1922); *Massachusetts* v. *Mellon*, 262 U.S. 447, 487 (1923). It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character as distinguished from an opinion advising what

[14] U.S. Const. Art. III, § 2.

the law would be upon a hypothetical state of facts. *Muskrat* v. *United States*, 219 U.S. 346, 367 (1911); *Texas* v. *Interstate Commerce Commission*, 258 U.S. 158, 162 (1922); *Ashwander* v. *T.V.A.*, 297 U.S. 288, 374 (1936).

The Appellees, Democratic and Republican Parties of Connecticut, respectfully submit that the Appellants herein have failed to allege a true case or controversy for two reasons. First, if their Complaint is that they are denied access to the ballot at a critical stage of the electoral process, when the major parties are nominating their candidates, that claim is taken care of by the Connecticut General Statutes which contain alternative methods of nominating candidates. Secondly, the Appellants themselves, either by joining a party, forming a new party or switching parties are themselves capable of mooting the claim raised herein.

1. Access to the Ballot

It is interesting to note that the Appellants challenge only § 9-431 of the Connecticut General Statutes which deals with the last stage of the nominating process. The Appellants express no interest in participating in any of the preliminary stages leading up to a possible primary nor in helping to select party candidates by any of the several methods[15] provided for in the statutes. It would appear, therefore, that their claim that they are pre-

[15] In addition to the challenge primary method, § 9-390 permits party endorsement of candidates for municipal office, town committee membership and convention delegates by: (1) caucus of enrolled party members; (2) delegates to a convention chosen in accordance with party rules; and (3) the town committee of the party itself.

vented from participating in an integral part of the process is specious.

While the Appellants' Complaint claims that they are barred from participating in a part of the process by which their Senators and Representatives are chosen, it must be remembered that Title 9 of the Connecticut General Statutes, and § 9-431 in particular, apply to the selection of candidates at every level of government. In addition, it is important to note that the Connecticut system is a "challenge primary" system—not every candidate nor every elector has a "right" to participate in a primary.

The basic nominating process is contained in § 9-380 which provides that state or district conventions, as the case may be, shall "choose a candidate for nomination to each state or district office".[16] Candidates for municipal office and for town committees of the parties are governed by § 9-390. Delegates to state or district conventions are chosen pursuant to § 9-393, who in turn choose the nominee at such conventions. In the majority of cases the nominating process ends at the convention and the party's nominee is presented to the voters at the general election.

The challenge aspect of Connecticut's system derives from the convention itself. If a candidate for office desires to challenge the choice of the convention as the party's candidate the process for qualifying for a primary is spelled out in § 9-400. He must first receive at least 20% of the votes of the convention delegates present and voting on any given roll call. He must also file with the Secretary of the State a petition bearing the signatures

[16] See *Conn. Gen. Stats.* § 9-372 for definitions of state, district and municipal offices and for major and minor parties.

of electors residing within the district under contest according to a statutory formula.[17] Finally he must deposit with the Secretary of the State a sum of money equal to 5% of the salary of the office for which his candidacy is to be filed.[18] Only after all of these criteria have been met is the candidate eligible to challenge the party's nominee.

Thus it can be seen that there is no automatic right either for a candidate or an elector to participate in a primary. If an elector favors the candidacy of a particular individual for United States Senator in a given party, he will not get a chance to vote for him unless that individual: (a) qualifies to participate in a primary; and (b) takes the affirmative steps to actually trigger a primary. If the membership of a given party have no "right" to participate in a primary, either as a candidate or as an elector, it is difficult to conceive that an unaffiliated voter somehow has a superior "right" so to do.

2. Participation by Independent and Minor Parties.

While an appearance on the ballot by a candidate seeking the nomination of a major party is governed by an elaborate procedure, people who qualify as representing a minor party have virtual clear sailing on to the ballot. Sections 9-453(a) through 9-453(s) of the Connecticut General Statutes provide a mechanism for a person who has not been nominated by a major party to have his name placed before the voters via the petition route. In summary, such a candidate must obtain signatures equal

[17] State office: 5,000; Congressional office; 2,000; Sheriff; 750; multi-town district office: 350; probate judge: 100.

[18] For judge of probate the sum is $50.00 and for State Senator or State Representative the sum is $25.00.

to one percent of the votes cast for the same office at the last preceding election.[19] Once the petition has been approved by the Secretary of the State,[20] the candidate's name will appear on the ballot. Since 1966, in various offices to be elected throughout the state, 969 petitions have been approved and 147 petitions have been disapproved.[21] It certainly appears that there has not been a lack of interest or participation in the nominating process.

Once a person has appeared on the ballot he may achieve the status of either a major party [22] or a minor party [23] depending on the number of votes he receives. Once the candidate receives major party status all of the rights to support his cause flow to him and his followers. If he fails to achieve major party status but does qualify for minor party status, his path thereafter is even smother. All he need do to qualify for the ballot is to follow the rules of his minor party. See *Connecticut General Statutes* §§ 9-451 and 9-452.

Annexed hereto as Appendix A is an enumeration of the number of candidacies which have achieved either major or minor party status. Once again it appears that a significant number of poeple have been sufficiently interested in the process to take advantage of the opportunities it avails them to appear on the ballot and present themselves to the voters.

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[19] *Conn. Gen. Stats.* § 9-453(d).

[20] *Conn. Gen. Stats.* § 9-453(o).

[21] *See* Appendix A.

[22] A major party is one whose candidate for governor received over 20% of the total vote cast or whose candidate for the office contested other than governor received over 10% of the total vote cast. *Conn. Gen. Stats.* § 9-372(e).

[23] A minor party is one whose candidate for governor received less than 20% of the total vote cast or whose candidate for the office contested received more than 1% but less than 10% of the total vote cast. *Conn. Gen. Stats.* § 9-372(f).

If the Appellants claim herein that the reason they want to participate in a party primary is to have a say in who the ultimate choice of the party will be, it is claimed that any dissatisfaction with the party's choices can, and has been challenged through the process available to interested persons. Therefore, it is contended that the claim raised herein does not present a true case or controversy.

3. Participation by the Appellants

It is submitted that being an "unaffiliated voter" is merely a status. The person who is "unaffiliated" can change that status at will by enrolling with a party, major or minor, of his choosing. This Court has neither the power, nor the desire it is assumed, to require that the Appellants remain unaffiliated.

The Appellants claim that they have a right not to associate with others by refusing to join a party. Neither the Republican nor the Democratic Parties of Connecticut dispute that right. But they also claim that mere enrollment with a party does not in any way do violence to an individual's freedom of thought. Within both parties there are people with political philosophies of every imaginable stripe. All of these people are welcomed into the respective political organizations, since they enrich the philosophy of the party as a whole.

If indeed, the Appellants wish to influence the ultimate choice of a candidate by either party, they need only go through the mechanical process of affiliation.[24] This process in no way challenges his freedom of thought or

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[24] *Conn. Gen. Stats.* § 9-20.

association. All it does is make him eligible to participate in party affairs, including any primaries of that party that occur within his town, district or the State. The Appellants herein are free to avail themselves of that process and by doing so would render their claim moot.

The Appellants themselves note that the "parties make no attempt to screen potential members to ensure that they adhere to a few vague principles that may be identified in party platforms or other documents. Indeed, any registered voter in Connecticut may affiliate with either major party without a test of his loyalty or his principles." [25] If that is the case, where is the controversy herein that merits plenary consideration by this Court? It is respectfully submitted that based on the Appellants' own argument, there simply is not a problem of constitutional dimension for review by this Court.

[25] Jurisdictional Statement, p. 25.

CONCLUSION

For all of the reasons stated herein, this Court should affirm the judgment of the United States District Cour for the District of Connecticut here appealed from because the Appellants have failed to present a substantial question for the decision of this Court.

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Dated: November 7, 1976

APPENDIX

Affidavit of Clifton A. Lenhardt, Deputy Secretary of the State

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

Civil Action No. H 76-20

NATHRA NADER and ALBERT C. SNYDER, JR.,
Plaintiffs,

VS.

GLORIA SCHAFFER, Secretary of the State, State of Connecticut,

DEMOCRATIC PARTY OF THE STATE OF CONNECTICUT and REPUBLICAN PARTY OF THE STATE OF CONNECTICUT,
Defendants.

I, Clifton A. Leonhardt, being first duly sworn according to law, depose and say:

1. That I am the Deputy Secretary of the State for the State of Connecticut.

2. That the Elections Division of the Office of the Secretary of the State lies within my general supervisory authority.

3. That at my direction the staff of the Elections Division of the Office of the Secretary of the State has researched the number of candidacies which have achieved major party status in state elections, exclusive of Demo-

cratic and Republican party nominees, from 1966 through 1974; the number of candidacies which have achieved minor party status in state elections from 1966 through 1974; and the number of nominating petition candidates in state and municipal elections, not including primary petition candidates, from 1966 through 1975.

4. Attached hereto and made a part hereof are the results of such research which are certified to be true and correct.

Dated at Hartford, Connecticut this 10th day of May, 1976.

/s/ CLIFTON LEONHARDT
CLIFTON A. LEONHARDT
Deputy Secretary of the State

Sworn and Subscribed to
before me this 10th day
of May, 1976.

JOSEPH W. GAYDOSH
Notary Public
My Commission Expires:
4-1-77

NUMBER OF CANDIDACIES WHICH HAVE ACHIEVED *MAJOR* PARTY STATUS IN STATE ELECTIONS

(Exclusive of Democratic and Republican Party Nominees)

1966 - 1974

1966— None			
1968— None			
1970—	7	U.S. Senator:	1
		State Senator:	2
		State Representative:	2
		Judge of Probate:	2
1972—	1	State Representative	
1974—	1	State Representative	

NUMBER OF CANDIDACIES WHICH HAVE ACHIEVED *MINOR* PARTY STATUS IN STATE ELECTIONS

1966 - 1974

1966—	13	Representative in Congress:	2
		State Senator:	2
		State Representative:	9
1968—	5	Electors of President and Vice President (slate):	1
		Representative in Congress:	2
		State Senator:	1
		State Representative:	1
1970—	8	Representative in Congress:	2
		State Senator:	3
		State Representative:	3
1972—	13	Electors of President and Vice President (slate):	1
		Representative in Congress:	1

	State Senator:	1
	State Representative:	9
	Judge of Probate:	1
1974— 21	Governor/Lieutenant Governor:	1
	Secretary of the State:	1
	Treasurer:	1
	Comptroller:	1
	U.S. Senator:	1
	Representative in Congress:	6
	State Senator:	3
	State Representative:	6
	Judge of Probate:	1

NUMBER OF NOMINATING PETITION CANDIDATES IN STATE AND MUNICIPAL ELECTIONS

(Not including primary petition candidates)
1966 - 1975

	Petitions Approved [1]	*Petitions Disapproved* [2]
1966—	24	16
1967—	39	3
1968—	7	7
1969—	170	30
1970—	24	None
1971—	212	30
1972—	23	9
1973—	192	24
1974—	29	15
1975—	249	13
Total	969	147

[1] May include some candidacies subsequently withdrawn
[2] Including petitions issued but not filed